

**TESTIMONY OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK  
SERVICE, DEPARTMENT OF THE INTERIOR  
BEFORE THE  
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
SUBCOMMITTEE ON NATIONAL PARKS, REGARDING S.127, TO AMEND THE  
GREAT SAND DUNES NATIONAL PARK AND PRESERVE ACT  
OF 2000 TO EXPLAIN THE PURPOSE AND PROVIDE FOR THE ADMINISTRATION  
OF THE BACA NATIONAL WILDLIFE REFUGE**

September 11, 2007

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on behalf of the Administration on a number of bills.

**S. 127, to Amend the Great Sand Dunes National Park and Preserve Act of 2000**

S. 127 would amend the Great Sand Dunes National Park and Preserve Act of 2000 to explain the purpose and provide for the administration of the Baca National Wildlife Refuge in Colorado. The Administration supports this bill if amended. The bill amends earlier legislation by affirmatively establishing a purpose statement for the Refuge

The Fish and Wildlife Service is currently managing the refuge under a Conceptual Management Plan finalized in 2005. The Plan noted that the refuge's authorizing legislation did not state a purpose and proposed language similar to that of S. 127. Specifically, S. 127 would explicitly define the purpose of the refuge as, "...to restore, enhance, and maintain wetland, upland, riparian, and other habitats for native wildlife, plant, and fish species in the San Luis Valley." The Service would also be required to emphasize migratory bird conservation and manage the refuge in concert with broader landscape scale conservation efforts.

The bill also includes a language requiring the Service to manage water on the refuge in approximately the same manner as has occurred historically. While this is the current intent of the Fish and Wildlife Service, such a requirement could be read to run counter to the purpose of the refuge and the sustainability of the wildlife, plant, and fish species and their habitat for which the refuge was established. As discussed below, for this reason we recommend a clarifying amendment to this language.

**Background on Baca National Wildlife Refuge**

The Baca National Wildlife Refuge is located in Saguache and Alamosa Counties in the San Luis Valley of south-central Colorado. The approved acquisition boundary includes 92,500 acres of wetlands, desert shrub grasslands, and riparian lands and abuts lands managed by other conservation agencies and organizations, including the National Park Service, the U.S. Forest Service, and The Nature Conservancy. Other land features included within the refuge include stabilized sand dunes, intermittent streams, and approximately 20,000 acres of wetland basins,

many of which are maintained through irrigation practices with decreed water rights. The refuge is administered as a unit of the San Luis Valley National Wildlife Refuge Complex, which includes the Alamosa and Monte Vista refuges, and other smaller units throughout the Valley.

The refuge's wetlands are an integral part of a larger wetlands complex that constitutes the largest and most diverse assemblage of wetlands in the State of Colorado. Several bird species of conservation concern, such as White-faced ibis, rely on the Baca's wetlands for key foraging areas during the breeding season. Waterfowl and other water birds heavily utilize wetlands and other habitats on the refuge at various times of year, especially during the nesting season. Native fish species, including a recently discovered population of Rio Grande chub, which is listed by the State of Colorado as species of concern, and the Rio Grande sucker, listed by the State as endangered, live on the refuge in small streams draining from the Sangre de Cristo Range. Elk, mule deer, and pronghorn also use the refuge.

To date, the Service has acquired 57,000 acres of fee-title land, and, in cooperation with neighboring landowners, is managing an additional 27,000 acres within the acquisition boundary

The refuge was authorized by Congress in 2000 as part of the larger creation of the Great Sand Dunes National Park and Preserve. While Congress did direct the Secretary of the Interior, acting through the Service, to administer the refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 and the Refuge Recreation Act of 1962, and specified certain water management requirements, no formal purpose for the refuge was provided.

Typically, national wildlife refuges, when established by Congress or by Executive action, are assigned a primary purpose that gives the Service clear management direction for the refuge. For example, many refuges have as their purpose the conservation of migratory birds. Others were established primarily for big game, or the conservation of species protected by the Endangered Species Act. In recent years, an increasing number of refuges have been established in urban areas to promote environmental education. Numerous refuges have multiple purposes.

It is important to note that these primary purposes do not necessarily preclude other management activities, including public use. Rather, they give refuge managers a framework for planning and implementing management activities, including long-range conservation planning to compatibility determinations, both of which were key provisions of the 1997 amendments to the 1966 Refuge Administration Act.

Designating purposes for the Baca National Wildlife Refuge is also necessary because the refuge is part of a larger public lands complex, comprised of multiple federal jurisdictions, which is in turn situated on a landscape with diverse land ownership status. Because refuges, by definition, are unique in their "wildlife first" approach to land management, it is important for the Service to be able to communicate with other area landowners, both public and private, as well as the general public about the purposes for which the Service will manage the Baca, as well as the overarching mission of the National Wildlife Refuge System.

## **Water Use Requirement**

The only change the Administration recommends to the bill as currently written does not involve the purpose statement of the refuge but the provision at section 1(3), which would require the Secretary of Interior, in administering water resources on the refuge to “use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically.” As noted above, historically, water has been used to irrigate lands now included in the Baca National Wildlife Refuge. The Service expects to continue to manage the land in such a fashion, however, the document that will guide the future of the refuge is a Comprehensive Conservation Plan (CCP). While this plan will not be finished for a number of years, the refuge will be operating under the current Plan and provide for “compatible” uses as provided by the National Wildlife Refuge System Improvement Act. The requirement of S. 127 to use “decreed water in approximately the same manner” as it has been used historically could restrict the options for future management actions available to the Service in developing the CCP.

Additionally, there is a pre-existing water service agreement between the Service and the Baca Grande Water and Sanitation District associated with the refuge. This agreement obligates the Service to lease up to 4,000 acre-feet of water rights – which the Service acquired along with the refuge – to the District. Currently, there are several wells on the refuge that are decreed for irrigation. Under the terms of the agreement, if the District requests the full amount of water to which they are entitled, the Service will need to change the decreed use of these wells from irrigation to municipal to fulfill the District’s request. Because the Service must file in State water court to change the decreed use of these wells from irrigation to municipal, we wish to avoid any potential conflict between S.127 and future state water court proceedings.

For these reasons, we recommend amending the bill to include the following italicized language:

(3) in subsection (d)--

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) *subject to existing agreements and to the extent it does not interfere with refuge purposes*, use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically.”.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared testimony on S. 127. I would like to extend our appreciation to you and the rest of the Subcommittee, especially Senator Salazar, for your leadership and support for the National Wildlife Refuge System and for landscape conservation efforts in the San Luis Valley. I would be happy to respond to any questions you may have.